

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JESSICA GARAY

v.

DONNA INDEPENDENT SCHOOL
DISTRICT

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CIVIL ACTION NO. _____

PLAINTIFF'S ORIGINAL COMPLAINT
AND DEMAND FOR JURY TRIAL

I. Introduction

1.1 This is a sexual assault and molestation action for money damages brought by JESSICA GARAY, arising from violations of her federal civil rights committed by the named defendant.

II. Parties

2.1 Plaintiff, JESSICA GARAY resides in Hidalgo County, Texas.

2.2 Defendant DONNA INDEPENDENT SCHOOL DISTRICT (hereinafter "Defendant DONNA ISD"), is political subdivision of Hidalgo County, Texas. DONNA ISD can be served with process by serving the Superintendent of Schools, Jesus Rene Reyna, at 116 N. 10th Street, Donna, TX 78537.

III. Jurisdiction and Venue

3.1 Pursuant to 28 U.S.C. § 1331, the court has original, federal question jurisdiction over Plaintiff's claims under Title IX of the Education Amendments of 1972.

IV. Background

4.1 When it is alleged in this complaint that Defendant DONNA ISD committed any act and/or omission, it is meant that Defendant DONNA ISD and/or its officers, principles, agents, teachers, employees, or representatives committed such act and/or omission and that at the time, it was done with full authorization and/or ratification of Defendant DONNA ISD or done in the normal and routine course and scope of employment of Defendant DONNA ISD and/or its officers, principles, agents, teachers, employees, or representatives.

4.2 Beginning in 2013, and continuing through 2014, Arturo Castillo, Jr., while under the employment, supervision and control of Defendant DONNA ISD as a truancy officer, sought after and sexually violated JESSICA GARAY. Such conduct on the part of Castillo occurred at Donna North High School in the DONNA ISD. At the time of the sexual violations, Castillo was a truancy officer. JESSICA GARAY was a minor attending that school.

4.3 On or about October 31, 2014, the Donna Police Department began their investigation of Castillo. Castillo was later arrested, indicted, and charged in Hidalgo County, Texas with improper relationship between an educator and a student, and tampering with government documents.

4.4 Plaintiff alleges that in Castillo committing such acts and/or omissions, CASTILLO was the agent and employee of Defendant DONNA ISD and was acting within such agency and employment, and was acting under the color of state law.

4.5 At all pertinent times, Defendant DONNA ISD authorized and/or ratified the wrongful tortious acts and/or omissions described herein. Such acts, committed as they were by a teacher for Defendant DONNA ISD are the acts of the District.

4.6 As a direct and proximate result of the said acts of DONNA ISD, JESSICA GARAY, has suffered the following injuries and damages:

- a. Violation of her constitutional rights under the Fifth, Eighth and Fourteenth Amendments to the United States Constitution to be free from state-sponsored deprivation of liberty without due process of law, free from the use of cruel and unusual punishment, and enjoyment of equal protection under the law; and
- b. Physical pain and suffering and emotional trauma and suffering.

4.7 Plaintiff further alleges that Defendant DONNA ISD either knew or had constructive knowledge of CASTILLO's past history of improper sexual conduct with female students of DONNA ISD. Defendant DONNA ISD did not follow DONNA ISD policy or state law, and they failed to take action to protect Plaintiff JESSICA GARAY's rights.

4.8 At all pertinent times, Defendant DONNA ISD authorized and/or ratified the wrongful and tortious acts and/or omissions described herein.

V. Violation of Title IX

5.1 The allegations contained in paragraphs 4.1 through 4.9 are herein incorporated by reference, the same as if fully set forth *verbatim* for any and all purposes of this pleading.

5.2 Defendant DONNA ISD is a regular recipient of federal funding and has been at all times relevant to this facts giving rise to this cause.

5.3 Plaintiff contends that Defendant DONNA ISD's failure to have policies, procedures, practices, and customs in place to assure JESSICA GARAY was not a victim of harassment and sexual abuse based upon her gender and/or sexual assaults violated her rights pursuant to Title IX of the Education Amendments of 1972 (Title IX), 86 Stat. 373, as amended, 20 U.S.C. § 1681 *et seq.*

5.4 Defendant DONNA ISD acted through the Assistant Principal and Principal of Donna High School and DONNA ISD's Superintendent of Human Resources, all of whom actually knew about the danger posed by Castillo to Donna High School students, including JESSICA GARAY, and acted with deliberate indifference in failing to investigate, failing to follow any established policy for investigation threats to students from District employees like Castillo, and failing to take steps necessary to protect students like JESSICA GARAY from Castillo.

5.5 The violation of Title IX by DONNA ISD was the proximate and producing cause of the sexual assault and molestation of JESSICA GARAY.

VI. Damages

6.1 As a result of the foregoing unlawful and wrongful acts of Defendant, Plaintiff has been caused to suffer general damages that include, but are not limited to, the following: physical pain and mental anguish in the past and future; pain and suffering in the past and future; past and future medical expenses including costs for psychological treatment and/or therapy; and severe emotional and mental distress in the past and future.

6.2 Pursuant to 42 U.S.C. § 1988, a prevailing party in a Title IX case is entitled to recover its attorney's fees and expert fees. Hence, Plaintiff further prays for

all costs, attorney fees, and expert fees associated with bringing the present case to trial.

6.3 Plaintiff asserts that all conditions precedent to filing suit have occurred.

6.4 Plaintiff demands a trial by jury for which the fee is separately tendered.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon trial upon the merits, Plaintiff recover compensatory damages against Defendant along with reasonable attorneys' fees, including costs and expert fees as allowed by law. Further, Plaintiff prays for all pre-judgment and post-judgment interest at the highest rate allowed by law that can be assessed against Defendant in the event of recovery, and Plaintiff prays for any and all further relief, to which she may show herself to be entitled.

Respectfully submitted,

GARCIA & OCHOA, L.L.P.

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